Supreme Court, U.S.
FILED
AUG 22 2016
OFFICE OF THE CLERK

No. 15-1111

IN THE

Supreme Court of the United States

BANK OF AMERICA CORP., ET AL.,
Petitioners,

v.

CITY OF MIAMI, FLORIDA,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

BRIEF FOR PETITIONERS

DAVID J. ZIMMER
GOODWIN PROCTER LLP
Three Embarcadero Ctr.
24th Floor
San Francisco, CA 94111

WILLIAM M. JAY
Counsel of Record
THOMAS M. HEFFERON
MATTHEW S. SHELDON
ANDREW KIM
DAVID S. NORRIS
GOODWIN PROCTER LLP
901 New York Ave., N.W.
Washington, DC 20001
wjay@goodwinlaw.com
(202) 346-4000

August 22, 2016

Counsel for Petitioners

QUESTIONS PRESENTED

The City of Miami sued Bank of America and other residential mortgage lenders based on a highly attenuated theory of recovery under the Fair Housing Act (FHA). The City seeks to recover money damages on the premise that the lenders engaged in discriminatory loan practices, some of those loans fell into default, some defaults led to foreclosures, some foreclosures caused neighborhood blight, the foreclosures and blight affected some property values, and the decreased property values led to decreased tax revenue while the blight increased the cost of services such as police. The court of appeals concluded that Miami stated an FHA cause of action, holding that anyone with Article III standing is an "aggrieved person" under the FHA, and that any financial injury an FHA defendant could foresee is proximately caused by the defendant's conduct.

The questions presented in these consolidated cases are as follows:

1. By limiting suit to "aggrieved person[s]," did Congress require that an FHA plaintiff plead more than just Article III injury-in-fact?

2. The FHA requires plaintiffs to plead proximate cause. Does proximate cause require more than just the possibility that a defendant could have foreseen that the remote plaintiff might ultimately lose money through some theoretical chain of contingencies?

3. Is Miami an "aggrieved person" under the FHA?

PARTIES TO THE PROCEEDING

Petitioners (for convenience, collectively referred to here as "Bank of America") are Bank of America Corp.; Bank of America, N.A., in its own capacity and as successor by *de jure* merger with Countrywide Bank, FSB; Countrywide Financial Corp.; and Countrywide Home Loans, Inc. The only respondent is the City of Miami, Florida.

RULE 29.6 STATEMENT

Bank of America, N.A. is a wholly-owned subsidiary of BANA Holding Corporation. BANA Holding Corporation is a wholly-owned subsidiary of BAC North America Holding Company. BAC North America Holding Company is a wholly-owned subsidiary of NB Holdings Corporation. NB Holdings Corporation is a wholly-owned subsidiary of Bank of America Corporation.

Countrywide Home Loans, Inc. is a wholly-owned subsidiary of Countrywide Financial Corporation. Countrywide Financial Corporation is a wholly-owned subsidiary of Bank of America Corporation.

Bank of America Corporation has no parent company, and no publicly traded company owns 10% or more of Bank of America Corporation's stock.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

RULE 29.6 STATEMENT ii

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

INTRODUCTION 1

STATEMENT 3

A. The FHA Allows Aggrieved Persons To Sue To Combat Discrimination 3

B. Local Governments, Including Miami, Sue Lenders Under The FHA, Seeking Billions Of Dollars 6

C. The District Court Dismisses Miami's Complaint Because Miami Is Not In The FHA's Zone Of Interests And Its Damages Were Not Proximately Caused By Bank Of America's Alleged Conduct 9

D. The Court Of Appeals Reinstates Miami's Complaint 11

SUMMARY OF ARGUMENT 12

ARGUMENT 16

I. The FHA's Cause Of Action For "Aggrieved Persons" Extends Only To Claims Within The Act's Zone Of Interests, Which Does Not Include Miami's Claim 16

A. Congress Presumptively Limits Every Federal Cause Of Action To Claims Within The Statute's Zone of Interests 18

B. The FHA Limits Plaintiffs To "Aggrieved Persons" And Does Not Permit Suit By Everyone With Article III Standing 19

C. The Court Of Appeals Misread This Court's Precedents In Holding That Anyone With Article III Standing Is An "Aggrieved Person" Under The FHA 26

1. This Court's Interpretations Of The Original Version Of The FHA Are Consistent With Interpreting "Aggrieved Persons" As Limited To Those Within The FHA's Zone Of Interests..... 26

2. The 1988 Amendments Limited The Private Cause Of Action To "Aggrieved" Plaintiffs, Clarifying That The Zone-Of-Interests Limitation Applies 34

3. The 1988 Amendments Significantly Expanded Government Enforcement, Eliminating Any Need To Over-Read The Definition of Private Plaintiffs..... 36

D. Miami's Claim Falls Outside The Fair Housing Act's Zone Of Interests Because It Alleges Only Economic Harm Incidental To Alleged Discrimination Against Others..... 37

II. The Fair Housing Act's Proximate-Cause Requirement Bars Claims, Like Miami's, For Damages That Are Too Attenuated From The Defendant's Alleged Discrimination 44

A. The Proximate-Cause Requirement Bars Claims For Damages That Are Too Attenuated From The Defendant's Alleged Conduct 45

B. The Fair Housing Act Cause Of Action Incorporates The Same Directness Inquiry As Other Federal Causes Of Action 49

C. Miami Did Not Adequately Allege That Its Injuries Were Proximately Caused By Bank Of America 52

CONCLUSION 59

APPENDIX—Relevant Statutory Provisions 1a

TABLE OF AUTHORITIES

Page(s)

CASES

Air Courier Conference of America v. American Postal Workers Union, 498 U.S. 517 (1991) 38, 39, 42

Anthony v. Slaid, 11 Met. 290 (Mass. 1846) 53

Anza v. Ideal Steel Supply Corp., 547 U.S. 451 (2006) 56, 57

Associated General Contractors of California, Inc. v. Carpenters, 459 U.S. 519 (1983) 44, 46, 47, 49, 50

Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970) 20, 35

Bennett v. Spear, 520 U.S. 154 (1997) 17, 19, 29, 36

Block v. Community Nutrition Institute, 467 U.S. 340 (1984) 38, 39, 42

City of Cleveland v. Ameriquest Mortg. Sec., Inc., 615 F.3d 496 (6th Cir. 2010) 6

Clarke v. Secs. Indus. Ass'n, 479 U.S. 388 (1987) 20, 35, 38, 39

Consol. Rail Corp. v. Gottshall, 512 U.S. 532 (1994) 15, 44, 51

Gilbert/Robinson, Inc. v. Carrie Beverage-Mo., Inc.,
989 F.2d 985 (8th Cir. 1993) 31

Gladstone, Realtors v. Village of Bellwood,
441 U.S. 91 (1979) ..... *passim*

Havens Realty Corp. v. Coleman,
455 U.S. 363 (1982) 11, 31, 32, 52

Hemi Group, LLC v. City of New York,
559 U.S. 1 (2010) 53, 56, 57

Holmes v. SIPC,
503 U.S. 258 (1992) ..... *passim*

Jama v. Immigration & Customs Enforcement,
543 U.S. 335 (2005) 35

Lexmark Int'l, Inc. v. Static Control Components, Inc.,
134 S. Ct. 1377 (2014) ..... *passim*

Meyer v. Holley,
537 U.S. 280 (2003) 49

Smith v. City of Jackson,
544 U.S. 228 (2005) 21

Southern Pac. Co. v. Darnell-Taenzer Lumber Co.,
245 U.S. 531 (1918) 46

Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.,
135 S. Ct. 2507 (2015) ..... *passim*

Thompson v. North American Stainless, LP,
562 U.S. 170 (2011) ..... *passim*

Trafficante v. Metropolitan Life Ins. Co.,
409 U.S. 205 (1972) ..... *passim*

STATUTES AND REGULATIONS

12 U.S.C. § 1464(q) 23
17 U.S.C. § 1009(b) 23
18 U.S.C. § 1864(b) 23
28 U.S.C. § 1254(1) 1
35 U.S.C. § 292(e) 23
38 U.S.C. § 2413(c) 23
42 U.S.C. § 3601 ..... 40, 41, 58
42 U.S.C. § 3602 24
42 U.S.C. § 3602(f) 4
42 U.S.C. § 3602(i) 6, 12, 20, 22
42 U.S.C. § 3604 4
42 U.S.C. § 3604(d) 4, 32, 40
42 U.S.C. § 3604(e) 4, 40
42 U.S.C. § 3605 4
42 U.S.C. § 3606 4
42 U.S.C. § 3610 (1970) 27
42 U.S.C. § 3610(a) (1970) 27
42 U.S.C. § 3610(a)(1)(A) 5, 36
42 U.S.C. § 3610(a)(1)(A)(i) 50
42 U.S.C. § 3610(a)(1)(A)(ii) 25
42 U.S.C. § 3610(d) (1970) 27
42 U.S.C. § 3610(f) 5
42 U.S.C. § 3610(g)(2) 5, 24
42 U.S.C. § 3612(a) 5, 24

42 U.S.C. § 3612(a) (1970) 27
42 U.S.C. § 3612(b) 5
42 U.S.C. § 3612(g) 5
42 U.S.C. § 3612(*o*) 5
42 U.S.C. § 3612(*o*)(1) 24
42 U.S.C. § 3612(*o*)(2) 25
42 U.S.C. § 3613 (1970) 37
42 U.S.C. § 3613(a) 6
42 U.S.C. § 3613(a)(1)(A) 12, 34
42 U.S.C. § 3613(c)(2) 50
42 U.S.C. § 3614(a) 5, 50
42 U.S.C. § 3614(d) 5
42 U.S.C. § 3614(d)(1)(B) 37, 42
42 U.S.C. § 3614(e) 25
46 U.S.C. § 58106(c) 24
24 C.F.R. § 103.25(d) 25
Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 6, 102 Stat. 1620 4
Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 808(b), 88 Stat. 729 4
Fair Housing Act of 1968, Pub. L. No. 90-284, tit. VIII, 82 Stat. 81 3

OTHER AUTHORITIES

H.R. Rep. No. 100-711 (1988) 5, 35, 36, 41

Dan B. Dobbs, *Law of Remedies* (2d ed. 1993) 51

1 Thomas M. Cooley, *A Treatise on the Law of Torts* (4th ed. 1932) 17, 46, 47, 53

W. Keeton et al., *Prosser and Keeton on the Law of Torts* (5th ed. 1984) .....passim

1 J. Sutherland, *A Treatise on the Law of Damages* (1882) 46, 47, 53

Webster's Second New International Dictionary (1957) 23

BRIEF FOR PETITIONERS

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a) is reported at 800 F.3d 1262. The decision in the companion case against Wells Fargo is reported at 801 F.3d 1258. The district court's decisions granting petitioners' motion to dismiss (Pet. App. 58a) and denying Miami's motion for reconsideration (Pet. App. 77a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 1, 2015. A petition for rehearing was denied on November 4, 2015 (Pet. App. 56a). On January 25, 2016, Justice Thomas extended the time within which to file a petition to and including March 4, 2016. No. 15A766. The petition for a writ of certiorari was filed on that date and granted on June 28, 2016. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutes are reproduced in the appendix to this brief.

INTRODUCTION

Congress does not normally open up damages causes of action to every citizen who might be able to claim some kind of injury. Rather, as this Court has held in cases covering the statutory spectrum from false advertising to employment discrimination to antitrust, Congress generally limits a federal cause

of action to people who have suffered the kind of injury the relevant statute seeks to prevent, flowing directly from a statutory violation.

This case is about whether the Fair Housing Act is one of the few exceptions—a cause of action with no such limitations, which *any* plaintiff with Article III standing can use to recover money damages it can indirectly link to a statutory violation committed against a stranger. Hoping that the FHA is such an exception, several cities and counties have seized upon that statute in an attempt to force large financial institutions to make up for shortfalls in municipal budgets. Yet these plaintiffs allege no impact on the integration of their communities, or any other FHA-protected interest of their own. They just demand a monetary recovery based on claimed discrimination against others, asserting that the ripple effects eventually affected municipal treasuries. And they contend their suits are proper because the FHA imposes no statutory limit on who may sue.

Nothing in the FHA opens its damages cause of action so widely. In fact, the statute *restricts* potential claims, in terms that invoke the same limitations that apply to most other federal statutes, including the closely analogous Title VII: only plaintiffs whose claims are within the statute's "zone of interests" may sue, and only for damages proximately caused by the violation.

Correctly understood, the FHA bars this suit. Congress intended the FHA to sweep broadly, not infinitely. Those who were denied access to housing and those who suffered the effects of racial segregation are within the zone of interests. The municipal plaintiffs are not: they assert no segregation-related

injury, but only harm to their financial bottom line, which they allege can be traced back to discrimination against third parties. A claim needs to be within the zone of interests in its own right, not by descent from someone else's claim. And an allegedly-discriminatory foreclosure does not give rise to a suit for lost profits by the former resident's utility company or grocer, lost home-value by the neighbors—or lost taxes by the city government. Those claims are not among the interests Congress sought to protect, and they rely on a theory of causation too attenuated to be *proximate* cause.

Bank of America fully supports the laudable goals of the FHA, and it has vigorously disputed the unproven (and untrue) allegations of FHA violations and "predatory lending." But Miami's case is more fundamentally flawed: because the interests Miami and its fellow municipal plaintiffs invoke are so far removed from what the FHA protects, Congress never authorized suits like these.

STATEMENT

A. The FHA Allows Aggrieved Persons To Sue To Combat Discrimination

Congress enacted the Fair Housing Act in 1968. *See* Pub. L. No. 90-284, tit. VIII, 82 Stat. 81. The Act was a response to the "considerable social unrest" caused in part by discriminatory housing practices intended "to encourage and maintain the separation of the races." *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2515-16 (2015) (*Inclusive Communities*). "By the 1960's, these policies, practices, and prejudices had created many predominantly black inner cities sur-

rounded by mostly white suburbs." *Id.* at 2515. The country was "moving toward two societies, one black, one white—separate and unequal." *Id.* at 2516 (citation omitted).

Congress enacted the FHA to "address[] the denial of housing opportunities" by banning a wide range of "[d]iscriminatory housing practice[s]" that had produced and maintained residential segregation. *Id.*; 42 U.S.C. § 3602(f). The FHA prohibits various forms of direct discrimination against individuals, such as "refus[ing] to sell or rent" a property for discriminatory reasons; refusing to offer services, such as home mortgages, for discriminatory reasons; and discriminating in the terms of sales, rentals, or real-estate-related transactions. 42 U.S.C. §§ 3604-3606. The FHA also prohibits other practices that further segregation, such as falsely representing, because of discrimination, that a property is not available for sale or rental, or representing that certain groups are moving into a neighborhood as a way of trying (for profit) to induce homeowners to sell or rent their homes. *Id.* § 3604(d)-(e).

The FHA initially protected against discrimination on the basis of "race, color, religion, or national origin," but in 1974 and 1988 Congress added sex, familial status, and (in a somewhat different form) disability as protected characteristics. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 808(b), 88 Stat. 729; Fair Housing Amendments Act of 1988 (1988 Amendments), Pub. L. No. 100-430, § 6, 102 Stat. 1620. Proof of *intent* to discriminate on one of these bases is not always required; this Court recently held that the FHA prohib-

its practices with a disparate *impact* as well. *Inclusive Communities*, 135 S. Ct. at 2521.

Although the FHA was originally enforced largely through private civil actions, Congress in 1988 substantially rewrote the enforcement mechanisms to shift the emphasis from private to government enforcement. *See* H.R. Rep. No. 100-711, at 17 (1988) (*House Report*) (noting that the amendments ensure that "the federal government can and will take an active role in enforcing the law"). Either the Department of Housing and Urban Development (HUD) itself or an "aggrieved person" can initiate agency enforcement proceedings by filing an administrative complaint. 42 U.S.C. § 3610(a)(1)(A).[1] If HUD finds "reasonable cause" to substantiate the complaint, it issues a "charge," *id.* § 3610(g)(2), which proceeds either before a HUD administrative law judge or, on any party's request, in a lawsuit brought in district court by the Attorney General on behalf of the "aggrieved person." *Id.* § 3612(a), (b), (o). The Attorney General can also file certain suits in her own right, primarily cases involving a "pattern or practice" of statutory violations. *Id.* § 3614(a). The Department of Justice's Civil Rights Division has filed dozens of such lawsuits in the past two years alone. ABA Cert. Amicus Br. 14 n.11.

In either an agency proceeding brought by HUD or a civil action brought by the Attorney General, the tribunal can award not only equitable relief and monetary damages for the aggrieved person, but also substantial civil penalties payable to the government. 42 U.S.C. §§ 3612(g), 3614(d).

---

[1] In appropriate circumstances, HUD can refer these complaints to competent state agencies. 42 U.S.C. § 3610(f).

The FHA can also be enforced by private civil actions, under a provision that Congress adopted in 1988 to replace previous versions. *Id.* § 3613. Like a HUD complainant, a civil plaintiff must be "aggrieved" by a violation of the statute. *Id.* § 3613(a). An "aggrieved person" is someone claiming "to have been injured by a discriminatory housing practice," or about to be injured. *Id.* § 3602(i).

B. Local Governments, Including Miami, Sue Lenders Under The FHA, Seeking Billions Of Dollars

Starting in 2008, and with increasing frequency in the last several years, local governments across the country have been bringing lawsuits that try to force Bank of America and other financial institutions to replace lost tax revenue and increased spending. These claims, brought by outside contingency-fee counsel, have seized on the FHA as their latest vehicle-of-choice.

Some cities initially brought suit on the theory that patterns of residential mortgage lending were a public nuisance, and that the cities were entitled "to recover millions in municipal expenditures and diminished tax revenues as damages." *City of Cleveland v. Ameriquest Mortg. Sec., Inc.*, 615 F.3d 496, 499 (6th Cir. 2010). These public-nuisance suits failed. For instance, Cleveland's alleged damages were held too remote from defendants' alleged conduct to satisfy state-law proximate-cause requirements. *Id.* at 502-06.

Searching for a cause of action they hoped would lack such limitations, city governments, and their contingency-fee attorneys, seized upon the federal

FHA. Their FHA claims do not seek to combat segregation, promote integration, or compensate those who have suffered from housing discrimination. Instead, the plaintiffs simply seek money that they contend they lost as an indirect result of discrimination against local residents. And they contend that the FHA allows them to sue, invoking the rights of others, without having to show that their claims fall within the statutory "zone of interests"—that is, without having to show that their asserted injury has anything to do with fair housing. At least thirteen cities and local governments have brought such FHA suits,[2] and most of them have filed multiple, nearly-identical lawsuits against different lenders.

Each suit demands a staggering amount of money. Cook County alleged that "compensatory damages alone in this case may exceed $1 billion"—*just from Bank of America*, not including the two other lenders Cook County separately sued. *County of Cook v. Bank of Am. Corp.*, No. 14-cv-2280, Dkt. No. 106 ¶431 (N.D. Ill. Mar. 18, 2016). Another suit, by several Georgia counties, alleged that compensatory damages "may exceed hundreds of millions of dollars." *Cobb County v. Bank of Am. Corp.*, No. 15-cv-4081, Dkt. No. 1 ¶582 (N.D. Ga. Nov. 20, 2015).

Miami's complaints in these consolidated cases are similar to the numerous other municipal FHA cases. Miami does not allege any effect on residential segregation or integration in Miami. In fact, it focuses

---

[2] These include Baltimore, Maryland; Birmingham, Alabama; Cobb, DeKalb, and Fulton Counties, Georgia; Cook County, Illinois; Memphis, Tennessee; Miami, Florida; Miami Gardens, Florida; Los Angeles, California; the Los Angeles Unified School District; Oakland, California; and Shelby County, Alabama.

on loans made to borrowers in neighborhoods that already had "substantial concentrations of minority households." J.A. 64. Instead, Miami alleges that statistical disparities exist between loan terms and performance across white, African-American, and Latino neighborhoods and borrowers, *e.g.*, that so-called "predatory loans are disproportionately located in minority neighborhoods," or that the "time to foreclosure" is faster "in African-American and Latino neighborhoods." J.A. 75, 84.

The complaint alleges that these disparities are the result of various lending policies.[3] For instance, Miami alleges that Bank of America created incentives to lend to "low income" borrowers through loans insured by the Federal Housing Administration, a program designed to expand credit opportunities for underserved borrowers. J.A. 72. Miami alleges that such loans have "higher risk" features and that disproportionately issuing such loans to minorities would be acting in a "discriminatory manner." J.A. 68 n.23.

Miami claims that the statistical disparities allegedly created by Bank of America's lending practices set in motion a lengthy causal chain that ultimately cost Miami money. The complaint alleges that less-favorable loan terms led some minority homeowners to default unnecessarily or prematurely; that some of those defaults led to vacancies and foreclosures at the properties securing the loans; that foreclosures led to decreased property values at both the secured

---

[3] The complaint makes no distinction among petitioners, though only one made loans in Miami throughout the subject period, two are holding companies that made *no* loans, and one was a competing lender whose past liability was not acquired.

property and neighboring properties; and that those decreases in property value led to lower property-tax revenue. Pet. App. 10a; J.A. 88-92. Miami also contends that foreclosures and vacancies produced conditions that called for more municipal services, such as police and code enforcement.

Like other municipal plaintiffs, Miami seeks a massive recovery. As to its property-tax injury alone, Miami purports to have identified 3,326 relevant Bank of America loans that resulted in foreclosure, and cites a study estimating that all homes within 449 feet of such foreclosures may decline in value between $3,500 and $7,600. J.A. 91-92, 95. These allegations thus seek to make Bank of America liable for hundreds of millions of dollars in property devaluations at *neighboring properties alone*.

C. The District Court Dismisses Miami's Complaint Because Miami Is Not In The FHA's Zone Of Interests And Its Damages Were Not Proximately Caused By Bank Of America's Alleged Conduct

The district court dismissed Miami's complaint. The court interpreted the FHA in light of the "two relevant background principles" that this Court "presumes" apply to all statutory causes of action: that the plaintiff must fall within the statutory "zone of interests" and show "proximate causality." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388, 1390 (2014); Pet. App. 64a. The court held that the FHA is no exception.

The court concluded that that Miami's claims fell outside the FHA's zone of interests because "[t]he City's complaints of decreased tax revenue and in-

creased municipal services are 'so marginally related to ... the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit suit.'" Pet. App. 68a (quoting *Thompson v. North American Stainless, LP*, 562 U.S. 170, 178 (2011)) (alteration in original). The court also concluded that Miami's alleged injuries were not proximately caused by Bank of America's alleged conduct because the alleged "causal chain is too attenuated." Pet. App. 69a.[4]

Miami sought reconsideration, attaching a proposed amended complaint. *See* Pet. App. 77a. While Miami adhered to the position that it did not have to be within the FHA's zone of interests to sue, Miami sought to add allegations that it has a Department of Community & Economic Development that works to reduce housing discrimination. That, Miami argued, places it within the FHA's zone of interests. J.A. 232-33; Pet. App. 82a.

The district court denied Miami's motion, concluding in relevant part that "sprinkling in allegations that the City has a generalized interest in racial integration" does not bring the claims within the FHA's zone of interests. Pet. App. 82a n.18. The allegations of an interest in integration were not "connected in any meaningful way to" Miami's claims to recover tax revenue and the cost of municipal services. *Id.*

---

[4] The district court also held that Miami's complaint was untimely under the FHA's two-year statute of limitations. Pet. App. 71a-72a.

D. The Court Of Appeals Reinstates Miami's Complaint

The Eleventh Circuit reversed. Pet. App. 1a-55a. The court of appeals held that the case must proceed even if Miami is outside the FHA's zone of interests and even if Miami cannot show that petitioners directly caused it any injury.

1. The court of appeals interpreted statements in three of this Court's decisions as ruling out any statutory limitation on the class of FHA plaintiffs, beyond bedrock Article III standing.[5] Pet. App. 27a (citing *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972); *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); and *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). Thus, the court concluded, plaintiffs need not be within any zone of interests to sue under the FHA.

The court of appeals acknowledged that this Court's more recent decisions "have cast some doubt on the viability" of that reading. *Id.* at 21a. Specifically, the court recognized that this Court had recently interpreted Title VII's right of action for "aggrieved" persons to incorporate a zone-of-interests limitation, and that the FHA's right of action for "aggrieved" persons is "nearly identical" to Title VII. *Id.* at 21a, 28a (citing *Thompson*, 562 U.S. at 176). But while the court of appeals thought that *Thompson* "may signal that the Supreme Court is prepared to narrow its interpretation of the FHA in the future,"

---

[5] The court concluded that Miami had Article III standing because its causation allegations were "plausible." Pet. App. 18a-19a.

id. at 28a, it pronounced itself bound by *Trafficante*, *Gladstone*, and *Havens*. *Id.* at 29a-30a.

2. The court of appeals acknowledged that a claim under the FHA, like virtually all other tort-like statutory claims, requires the plaintiff to show that the defendant was the *proximate* cause of her injury. Pet. App. 32a. The court also recognized that this Court required directness, not just foreseeability, as part of the proximate-cause inquiry incorporated from the common law into RICO, antitrust, and Lanham Act causes of action. *Id.* at 35a (citing *Holmes v. SIPC*, 503 U.S. 258 (1992); and *Lexmark*, 134 S. Ct. at 1390). But the court held that the FHA should be "given 'a generous construction,'" meaning that a proximate cause need not be a direct one, and that an FHA plaintiff need only allege that its injury was "foreseeable." *Id.* at 37a, 38a (quoting *Trafficante*, 409 U.S. at 212). And the court thought Miami had plausibly alleged that its alleged injury would have been "foreseeable," despite the "several links in th[e] causal chain," if Bank of America had used some combination of "analytical tools" and "published reports." *Id.* at 38a-39a.

SUMMARY OF ARGUMENT

The FHA allows suit by an "aggrieved person," defined as a person "injured by," or about to be "injured by," a statutory violation. 42 U.S.C. §§ 3613(a)(1)(A), 3602(i). This Court has consistently—and recently—held that such language incorporates "two relevant background principles": "zone of interests and proximate causality." *Lexmark*, 134 S. Ct. at 1388. Each principle applies fully to the FHA, and each bars Miami's suit.

I. Federal causes of action are available only to those within the statutory zone of interests, unless Congress "expressly negate[s]" the zone-of-interests limitation. *Id.* The FHA is not one of the exceptional statutes that negates that limitation and allows anyone with Article III standing to sue. Miami therefore cannot sue, because its claims for financial injury are well outside the FHA's zone of interests.

Nothing in the FHA's text remotely negates the ordinary zone-of-interests limitation. The FHA's language is standard, not remarkable. Title VII, like the FHA, limits suit to those "aggrieved" by a statutory violation, and this Court read "aggrieved" in Title VII to incorporate the zone-of-interests limitation. *Thompson*, 562 U.S. at 175-78. This Court has read "aggrieved" in the Administrative Procedure Act the same way for more than 40 years.

The FHA's structure similarly confirms the absence of any intent to abandon the usual zone-of-interests limitation. Unlike the rare causes of action that let "any person" (with Article III standing) sue for injunctive relief, the FHA does not depend on private attorneys general for its enforcement; the government has ample authority to enforce the FHA.

This Court's decisions in *Trafficante*, *Gladstone*, and *Havens* are consistent with applying a zone-of-interests limitation to the FHA. *Trafficante* held only that "all in the same housing unit who are injured by racial discrimination in the management of those facilities"—individuals clearly within the FHA's zone of interests—can sue. 409 U.S. at 212. *Gladstone* and *Havens* interpreted a now-superseded cause of action that, unlike the current statute, was not limited to those "aggrieved" and that "contain[ed] no

particular statutory restriction on potential plaintiffs." *Gladstone*, 441 U.S. at 103. The latter decisions posited that anyone with Article III standing could sue, but this Court recognized in *Thompson* that those statements were dicta: the plaintiffs' claims in each case were within the FHA's zone of interests, so the Court had no reason to reject the zone-of-interests limitation. 562 U.S. at 176-77.

Miami's claims fall far outside the FHA's zone of interests. Congress adopted the FHA at a time of significant racial turmoil, seeking to eradicate discriminatory housing practices that led to segregation. *Inclusive Communities*, 135 S. Ct. at 2515-16. The zone of interests it protected extends not only to those denied access to housing as a result of discrimination, but also to those injured by the resulting increase or persistence of segregation. But Congress did not adopt the FHA to provide a financial recovery for plaintiffs like Miami, who were not individuals who suffered discrimination or were forced to live in segregated communities, or organizations spending money fighting discrimination against others.

Miami claims a purely financial injury that allegedly derives—remotely—from alleged discrimination against others. That assertion fails to set Miami apart from a vast crowd of potential plaintiffs who could allege they might incidentally benefit if discrimination victims were financially better off. Miami's purportedly lost tax revenue is no different from neighbors' lost property value, or local butchers' lost sales. Recognizing such a theory of trickle-down injury would leave nothing outside the zone of interests.

II. Miami's theory of causation also fails the FHA's proximate-cause requirement, because the links from loan to default, to foreclosure, to vacancy, to blight, to lower property values, to strained municipal budgets are simply too attenuated.

Congress presumptively limits damages under federal statutes to those proximately caused by a statutory violation. The proximate-cause element requires a "sufficiently close connection" between the claimed damages and the "conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390. Damages "too remote" from the prohibited conduct are not recoverable. *Holmes*, 503 U.S. at 268-69.

The court of appeals erroneously required only that Miami's injuries have been theoretically foreseeable by petitioners, regardless how indirect the causal chain. But as this Court has warned, "foreseeability ... is hardly a condition at all," because with "a broad enough view, all consequences of a negligent act, no matter how far removed in time or space, may be foreseen." *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 553 (1994). Foreseeability alone is both inconsistent with this Court's proximate-cause precedent and inadequate to accomplish the primary goal of the proximate-cause inquiry: to avoid imposing infinite liability for all wrongful acts.

Under a correct understanding of the proximate-cause requirement, Miami's claims for tax losses and municipal expenses are too remote. This Court has already held that where defendants' securities fraud bankrupted a broker-dealer, the broker-dealer's injured customers could not sue because their claimed injury was "too remote"—"purely contingent on the harm suffered by the broker-dealers." *Holmes*, 503

U.S. at 271. Miami's claimed injury here is far more remote. Its alleged causal chain is much longer, and at each link, there are many other potential causes besides loan terms—causes ranging from a global recession to a divorce. Miami's Rube Goldberg-style theory of indirect causation is precisely what the proximate-cause requirement prohibits.

ARGUMENT

I. The FHA's Cause Of Action For "Aggrieved Persons" Extends Only To Claims Within The Act's Zone Of Interests, Which Does Not Include Miami's Claim

Congress presumptively limits federal causes of action to those suing to vindicate rights within the zone of interests—the interests the statute is intended to protect or promote. Under the court of appeals' interpretation, however, the FHA has no such limitation, but instead would sanction suits by anyone with Article III standing. That interpretation would make the FHA not just extraordinarily broad, but perhaps the broadest federal cause of action *for money damages* on the books today. A statute focused on civil rights would become a vehicle for litigating grievances that, like Miami's, are far afield from the civil rights Congress sought to protect.

Nothing in the FHA's text or structure rebuts the presumption that the zone-of-interests limitation applies. Indeed, the FHA looks nothing like the unusual case. Statutes that allow *anyone* to sue make that broad scope unambiguously clear in their text. And they generally follow the "private attorney general" model: allowing anyone to seek injunctive relief

to enforce a law "in which all persons have an interest." *Bennett v. Spear*, 520 U.S. 154, 165 (1997). The FHA, by contrast, expressly limits its private right of action to "aggrieved persons" who were "injured by" housing discrimination. And the FHA's private civil action is primarily about obtaining redress for individual injury, not vindicating public rights. Under the FHA, as under nearly every other private statutory cause of action, claims within the zone of interests are cognizable; claims outside it are not.

Miami's lawsuit is firmly outside. The FHA's zone of interests protects those whose FHA rights are violated directly, and promotes integration by also protecting those who suffer the effects of discrimination when a building or neighborhood becomes or remains segregated. Miami, by contrast, does not assert it was deprived of equal treatment on the basis of race or ethnicity, and it alleges no loss or damage arising from segregation tied to discriminatory conduct. It merely contends that loans to others *in* Miami (loans that it calls "predatory") set in motion a chain of events that ultimately cost Miami money. And it seeks money damages for its own coffers, none of which would go to the alleged victims of improper lending. As Miami's suit has nothing to do with the interests Congress protected in the FHA, it is not cognizable.

The limiting principles that keep federal lawsuits germane to the statutory mission apply to the FHA with particular force. Just a year ago, this Court explained that liability under the FHA *cannot* be unlimited, but must be subject to "adequate safeguards" that prevent the private right of action from slipping its boundaries. *Inclusive Communities*, 135 S. Ct. at

2523. The zone-of-interests limitation is one such safeguard. "A robust causality requirement" is another. *See id.*; Part II, *infra*. The safeguards this Court contemplated would be wholly *in*adequate if the FHA could be used by plaintiffs that suffered no discrimination, relying on an attenuated theory of causation, to win a billion-dollar damages award based principally on purported disparate impact.

A. Congress Presumptively Limits Every Federal Cause Of Action To Claims Within The Statute's Zone of Interests

When Congress creates a statutory cause of action, it presumptively limits claims that can be brought under that cause of action to those within the statute's "zone of interests." *Lexmark*, 134 S. Ct. at 1388. Under that rule, plaintiffs cannot sue if their interests are "marginally related to or inconsistent with the purposes implicit in the statute." *Id.* at 1389 (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012)).

This presumption is anything but new. Rather, it is drawn from the common law, which provided that "a plaintiff may not recover under the law of negligence for injuries caused by violation of a statute unless the statute 'is interpreted as designed to protect the class of persons in which the plaintiff is included, against the risk of the type of harm which has in fact occurred as a result of its violation.'" *Id.* at 1389 n.5 (quoting W. Keeton et al., *Prosser and Keeton on the Law of Torts* § 36, at 229-30 (5th ed. 1984) (*Prosser*)). In the context of a statutory right of action, this rule

becomes a presumption, which Congress can negate if it chooses.

To negate the presumption, however, Congress must speak "expressly." *Id.* at 1388. It is not enough for a plaintiff to show that Congress used "broad language" that, "[r]ead literally ... might suggest that an action is available to anyone who can satisfy the minimum requirements of Article III." *Id.* Nor can the plaintiff rely on the fact that the statute has a remedial purpose. Even remedial statutes exclude plaintiffs whose "interests are unrelated to the statutory prohibitions." *Thompson*, 562 U.S. at 178 (Title VII).

Rather, Congress rebuts the presumption by doing what it did in the Endangered Species Act, which states that "*any person* may commence a civil suit"—language of "remarkable breadth when compared with the language Congress ordinarily uses"—*and* contains other structural indicia confirming that Congress meant what it said. *Bennett*, 520 U.S. at 164-65 (quoting 16 U.S.C. § 1540(g)) (emphasis added).

B. The FHA Limits Plaintiffs To "Aggrieved Persons" And Does Not Permit Suit By Everyone With Article III Standing

Nothing in the FHA negates the zone-of-interests limitation. Quite the contrary. The statutory text and structure demonstrate in several ways that, like most statutes, the FHA's cause of action extends only to claims within a defined zone of interests. First, in defining who could sue, Congress did not use open-ended language like "any person"; instead, it provided that plaintiffs must be "aggrieved person[s]," us-

ing a word that carries with it the zone-of-interests limitation in other contexts. Second, the definition of "aggrieved person" specifies that an FHA plaintiff must claim that she was, or will be, actually "injured *by*" an FHA violation, 42 U.S.C. § 3602(i), not just "as a result of" one. Third, other FHA provisions using the term "aggrieved person," especially as added by the 1988 Amendments, show that the term cannot be read as the court of appeals did—as including anyone with Article III standing.

1. In creating a civil cause of action, Congress bestowed that right only on a carefully-defined group: "aggrieved persons." This Court already held that the "common usage" of "aggrieved" incorporates a zone-of-interests limitation. *Thompson*, 562 U.S. at 177. It is certainly not the language of "remarkable breadth" that could allow any person with standing to sue. *Bennett*, 520 U.S. at 164.

This Court has consistently interpreted "aggrieved" in light of that "common usage." Most relevant here, this Court recently, and unanimously, read Title VII to use "aggrieved" to limit plaintiffs to those within Title VII's zone of interests. *Thompson*, 562 U.S. at 177-78. The Administrative Procedure Act's cause of action is similarly limited to those "aggrieved" by administrative action, and for decades this Court has held that only plaintiffs within the relevant statute's zone of interests can sue. *See, e.g., Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153-54 (1970); *Clarke v. Secs. Indus. Ass'n*, 479 U.S. 388, 394-96 (1987).

The best reading of the FHA is the one that accords with the ordinary background zone-of-interests presumption, the "common usage" of "aggrieved," *and*

the authoritative construction of the FHA's statutory cousin Title VII. This Court has recognized that Title VII cases provide "essential background and instruction" in interpreting the FHA, *Inclusive Communities*, 135 S. Ct at 2518, especially given that the FHA was enacted soon after Title VII, *id.* at 2519. Thus, the "similarity in text" calls for similar constructions. *Id.*; *accord Smith v. City of Jackson*, 544 U.S. 228, 233 (2005) (when Title VII and another contemporaneous civil-rights statute use the same term, it is "appropriate to presume that Congress intended that text to have the same meaning in both statutes"). There is simply no reason Congress would have intended the term "aggrieved" to *bar* suits outside Title VII's zone of interests, but *authorize* suits outside the FHA's zone of interests.

Notably, in *Thompson* this Court repeatedly analogized the Title VII and FHA causes of action, strongly suggesting that the word "aggrieved" has the same meaning in both statutes. This Court rejected the defendant's argument for an interpretation of "aggrieved" that would impose a limitation even stricter than the zone of interests because that interpretation "contradict[ed]" prior FHA cases: "We see no reason why ['aggrieved'] should be given a narrower meaning" in Title VII than in the FHA. 562 U.S. at 177. And *Thompson* repeatedly emphasized that its application of the zone-of-interests limitation to Title VII was consistent with this Court's "holdings" (if not some dicta, *see* pp. 31-33, *infra*) in prior FHA cases, a conclusion that would have been unnecessary if the word had a different meaning in each statute. *Id.* at 176.

Thompson's rationale for applying the zone-of-interests limitation—that "absurd" consequences could follow from allowing anyone with Article III standing to bring a Title VII suit—is equally applicable to the FHA. *Id.* at 176-77. The "absurd consequence" this Court identified was that "a shareholder would be able to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock decreased as a consequence." *Id.* at 177. Congress could not have used the word "aggrieved" to bar such absurdities in Title VII, but then used the same word to authorize those same absurdities in the FHA—yet, under the court of appeals' holding, a shareholder *could* sue under the FHA for stock-depressing discrimination. Similarly, there is no reason to think that Congress barred cities from suing to recover lost *income* taxes under Title VII based on an allegedly discriminatory *firing*, but allowed cities to sue under the FHA to recover lost *property* taxes based on an allegedly discriminatory *foreclosure*.

2. The FHA, unlike Title VII, has a definitional provision that gives additional content to the term "aggrieved person," but that definition only confirms what the word "aggrieved" already signals: plaintiffs alleging injuries outside the FHA's zone of interests do not qualify as "aggrieved persons." The definition does not open up a broader class of plaintiffs.

The FHA defines "aggrieved person" to mean "any person who (1) claims to have been *injured by* a discriminatory housing practice; or (2) believes that such person will be *injured by* a discriminatory housing practice that is about to occur." 42 U.S.C. § 3602(i) (emphases added). The key phrase in both

prongs circumscribes the class of plaintiffs, excluding anyone not actually *injured by* the FHA violation. The ordinary meaning of "by" is "through the *direct* agency of." *Webster's Second New International Dictionary* 367 (1957) (emphasis added).

At a minimum, the phrase "injured by" is not the sort of unusually broad language that could *negate* the zone-of-interests limitation. To the contrary, this Court has already held that a cause of action for any person "damaged *by*" a statutory violation is available only to plaintiffs who fall within the statute's zone of interests. *Lexmark*, 134 S. Ct. at 1388. And "injured by" is narrower than the formulations Congress has used in many other causes of action, such as "injured *as a result of*."[6] The phrase simply will not support the maximalist reading Miami needs here.

Reading the "injured by" formulation to extend to the full scope of Article III would have far-reaching consequences.[7] Congress routinely uses the "injured by" formulation in statutes.[8] Interpreting that lan-

---

[6] *E.g.*, 35 U.S.C. § 292(e) (a person injured "as a result of" a violation of the false-marking statute can bring suit); 18 U.S.C. § 1864(b) ("Any person injured as the result of" certain conduct on federal lands can bring suit); 38 U.S.C. § 2413(c)(3) ("Any person ... who suffers injury as a result of" certain conduct at military funerals can bring suit).

[7] *See Gilbert/Robinson, Inc. v. Carrie Beverage-Mo., Inc.*, 989 F.2d 985, 990 (8th Cir. 1993) (applying zone-of-interests limitation to statute allowing suit by "any person injured thereby").

[8] 17 U.S.C. § 1009(b) ("Any person injured by" violation of copyright on audio recordings); *id.* § 1203(a) ("Any person injured by" circumvention of copyright-protection systems); 12 U.S.C. § 1464(q) ("Any person injured by" unlawful credit-tying ar-

guage instead to *negate* the zone-of-interests limitation and authorize suit by anyone with Article III standing would turn the presumptive rule into the exception.

"Aggrieved" and "injured by" are standard terms; both accord with the zone-of-interests limitation that presumptively applies to all causes of action. *Lexmark*, 134 S. Ct. at 1388. Neither can be read to *rebut* the zone-of-interests presumption.

3. Other uses of the defined term "aggrieved person" in the FHA show that the class of potential plaintiffs cannot be as broad as the court of appeals thought. *See* 42 U.S.C. § 3602 (definitions apply everywhere defined terms are "used in" the FHA).

When an "aggrieved person" files a complaint with HUD, and HUD determines that "reasonable cause exists to believe that a discriminatory housing practice has occurred," then the "aggrieved person" can *require* the Attorney General to "commence and maintain[] a civil action on [her] behalf." 42 U.S.C. §§ 3610(g)(2), 3612(a), (*o*)(1). If an "aggrieved person" were anyone with Article III standing, then anyone with an economic loss supposedly traceable to discrimination against others—from cities to utility companies to next-door neighbors—could file an administrative action in the hope of having the claim litigated in federal court at federal taxpayers' expense. It is highly unlikely that Congress intended

---

rangements); 46 U.S.C. § 58106(c) ("A person" whose property is "injured by" specified conduct by certain government contractors).

to devote federal dollars and lawyers to litigating such claims.[9]

"Aggrieved persons" also are granted the statutory right to intervene in others' litigation, rights that cannot realistically extend as far down the chain of remote causation as Miami contends. When HUD brings an administrative charge and either the complainant or respondent elects to have that charge adjudicated in court, then "[a]ny aggrieved person with respect to the issues to be determined in a civil action under this subsection *may intervene as of right* in that civil action." 42 U.S.C. § 3612(*o*)(2) (emphasis added). If anyone with Article III standing were an "aggrieved person," then everyone who suffered any financial injury somehow related to alleged discrimination could, as of right, intervene in a stranger's case. Again, those intervenors could include the city government, local stores that lost customers, or utility companies that lost ratepayers.[10] Such broad intervention rights would slow proceedings and delay relief for the people for whom the FHA was actually passed.

---

[9] Indeed, HUD appears to have implicitly rejected that construction in applying the definition of "aggrieved person" in § 3610. HUD has used its authority to prescribe the form of administrative complaints, 42 U.S.C. § 3610(a)(1)(A)(ii), to require that a complaint include, among other things, a "brief description of *how you were discriminated against* in an activity related to housing." 24 C.F.R. § 103.25(d) (emphasis added). A plaintiff like Miami cannot claim to have been "discriminated against."

[10] Similarly, when the Attorney General brings suit, any person can intervene if the suit "involves an alleged discriminatory housing practice with respect to which such person is an 'aggrieved person.'" 42 U.S.C. § 3614(e).

C. The Court Of Appeals Misread This Court's Precedents In Holding That Anyone With Article III Standing Is An "Aggrieved Person" Under The FHA

The court of appeals thought that this Court's cases construing the pre-1988 FHA required it to hold that the FHA has no zone-of-interests test, even today, but instead allows suit by anyone within the outer boundaries of Article III. Those cases did not reject the zone-of-interests limitation; in fact, *Trafficante*, *Gladstone*, and *Havens* considered plaintiffs that, unlike Miami, sued to vindicate interests *within* the FHA's zone of interests. This Court certainly did not hold definitively that the term "aggrieved person" is so broad as to include *anyone* with constitutional standing; the language the court of appeals quoted was dicta, as this Court recognized in *Thompson*. In any event, the 1988 Amendments materially changed the statute's reach. As the statute exists today, only those within the zone of interests are "aggrieved persons" who may sue under § 3613.

1. This Court's Interpretations Of The Original Version Of The FHA Are Consistent With Interpreting "Aggrieved Persons" As Limited To Those Within The FHA's Zone Of Interests

As enacted in 1968, the FHA contained two private causes of action, one permitting action by "person[s] aggrieved" (at issue in *Trafficante*) and the other with no such restriction (at issue in *Gladstone* and *Havens*). None of those three cases supports the notion that the term "aggrieved persons" in the FHA

today rebuts the zone-of-interests presumption and extends to the limits of Article III.

1. The first private cause of action in the 1968 statute, 42 U.S.C. § 3610 (1970), was part of a procedure for filing complaints with HUD. This provision permitted complaints only by "person[s] aggrieved," which the statute defined as "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur." *Id.* HUD could not adjudicate these complaints, but could only seek "voluntary compliance" through "informal methods." *Id.* § 3610(a), (d). If HUD failed to resolve a complaint within 30 days, the "person aggrieved" could "commence a civil action" in district court. *Id.* § 3610(d).

The second private cause of action, § 3612, allowed a plaintiff to sue directly in district court in the first instance. Unlike § 3610, however, § 3612 included "no particular statutory restrictions on potential plaintiffs." *Gladstone*, 441 U.S. at 103. Instead, it provided broadly that the rights granted by the FHA "may be enforced by civil actions." 42 U.S.C. § 3612(a) (1970).

2. This Court interpreted the scope of § 3610's cause of action for "person[s] aggrieved" in *Trafficante*. There, two tenants of an apartment complex—one white and one African-American—filed first a HUD complaint and then a civil action under § 3610, alleging that their apartment complex discriminated against nonwhite rental applicants. 409 U.S. at 207-08. Both tenants contended that such discrimination had deprived them of the social and economic benefits of living in an integrated community. *Id.* at 208.

This Court held that the tenants' suit could proceed even though neither was an unsuccessful minority applicant. *Id.* The Court relied on HUD's inability to enforce the FHA as evidence that Congress intended to rely primarily on "private attorneys general" for enforcement. *Id.* at 210-11. The Court also favorably cited a Third Circuit decision interpreting *Title VII*'s analogous cause of action for "person[s] claiming to be aggrieved." The Third Circuit had held that the Title VII provision extended as broadly as Article III permits (*id.* at 209 (citing *Hackett v. McGuire Bros., Inc.*, 445 F.2d 442, 446 (3d Cir. 1971))—an interpretation of Title VII this Court eventually rejected in *Thompson*.

In permitting the tenants' suit, however, the Court did not hold that anyone with Article III standing is "aggrieved" under the FHA. Instead, in order to "give vitality" to § 3610(a), the Court adopted "a generous construction which gives standing to sue to all in the same housing unit who are injured by racial discrimination in the management of those facilities." *Id.* at 212; *see also id.* at 209 (FHA standing extends as broadly as Article III permits "insofar as tenants of the same housing unit that is charged with discrimination are concerned"). Such tenants suffer injury the FHA was intended to prevent, namely the "loss of important benefits from interracial associations." *Id.* at 209-10.

Trafficante's analysis is not only consistent with, but affirmatively supports, interpreting "aggrieved" persons to be those within the FHA's zone of interests. That zone plainly includes "all in the same housing unit who are injured by racial discrimination in the management of those facilities." *Id.* at

212. The Court did not go any farther; as the repeated limiting language about tenants and their injury shows, the Court gave the term a "generous construction," but not an unlimited one.[11]

3. This Court's later decisions in *Gladstone* and *Havens* interpreted the other private right of action then part of the FHA, in § 3612, which was *not* limited to "persons aggrieved." Neither decision, therefore, can have directly spoken to the meaning of "aggrieved" or to who may sue under a provision limited to "aggrieved" persons.

In *Gladstone*, the Village of Bellwood and six area residents alleged that two real estate firms were intentionally steering minority homebuyers into "an integrated area of Bellwood approximately 12 by 13 blocks in dimension and away from other, predominantly white areas." 441 U.S. at 95. The village claimed injury from the illegal manipulation of its housing market, and the residents claimed the same deprivation of the benefits of an integrated community at issue in *Trafficante*. *See id.*

The realtors argued that because this Court had interpreted "aggrieved" broadly in *Trafficante*, and § 3612 did not include the word "aggrieved," § 3612

---

[11] In dicta, *Bennett* identified the FHA as a statute that allowed anyone with Article III standing to bring suit, citing *Trafficante*. *Bennett*, 520 U.S. at 165-66. As discussed in the text, however, this Court has since recognized that *Trafficante*'s holding was significantly more limited. *Thompson*, 562 U.S. at 176. Further, the FHA reference in *Bennett* was not important to the Court's analysis, as *Bennett* went on to explain that, as compared with the FHA, the "statutory language [in the Endangered Species Act] is even clearer, and the subject of the legislation makes the intent to permit enforcement by everyman even more plausible." 520 U.S. at 166.

must be *narrower* than § 3610, and be limited to "direct victims" of discrimination. *Id.* at 100-01. This Court rejected that argument, explaining that the word "aggrieved" was a "*restriction[]*" on, not an expansion of, potential plaintiffs: The "absence of 'person aggrieved' in § [36]12 ... does not indicate that standing is more limited under that provision than under § [36]10. *To the contrary, § [36]12 on its face contains no particular statutory restrictions on potential plaintiffs.*" *Id.* at 103 (emphasis added).

The realtors conceded that § 3610 contained no limitations on who could sue. *See id.* at 100. Given that § 3612 was, if anything, *broader* than § 3610, *Gladstone*'s conclusion that the residents and village could sue followed clearly from *Trafficante*, as both sets of plaintiffs asserted interests the FHA was intended to protect. The neighborhood residents had suffered the same integration-related injury as the tenants in *Trafficante*, and the village asserted an interest in integration protected by the FHA "[i]f, as alleged, petitioners' sales practices actually have begun to rob [it] of its racial balance and stability." *Id.* at 111-12.[12]

---

[12] In discussing Article III standing, the Court mentioned that the "adverse consequences" of "replacing what is presently an integrated neighborhood with a segregated one" could include "diminishing [the village's] tax base," but did not suggest that this was either necessary or sufficient for standing. 441 U.S. at 110-11. The Court was clear that the village would have standing even if excluding minorities had *increased* property values; it was the effect on the village's "racial balance and stability" that gave it standing. *Id.* at 111. That discussion of Article III standing certainly does not show that a monetary injury *without* any connection to "racial balance and stability" (like the one Miami alleges) is cognizable under the FHA.

Gladstone's holding thus derived from the lack of any statutory restriction on potential plaintiffs in § 3612 that could justify an outcome different from *Trafficante*. Because the realtors had conceded that § 3610 contained no limitations, *see id.* at 100, the opinion went on to state that the class of plaintiffs entitled to bring FHA suits under the broader § 3612 is "'as broa[d] as is permitted by Article III of the Constitution.'" *Id.* at 109 (brackets in original). That statement, on which Miami has rested its position, merely quotes *Trafficante*'s quotation from the Third Circuit's now-defunct Title VII analysis, which *Trafficante* itself did not adopt and which this Court later held in *Thompson* is not a correct statement of the law of Title VII. *See also id.* at 103 n.9. As this Court recognized in *Thompson*, *Gladstone*'s statement that anyone with Article III standing can bring an FHA suit was dicta. 562 U.S. at 176 (noting that a zone-of-interests limitation is consistent with *Gladstone*'s "holding[]"). This is especially true as to § 3610's "person aggrieved" language, which was not contested in *Gladstone*.

Havens also concerned allegations of racial steering brought under § 3612. Citing *Gladstone*, *Havens* opined that Congress intended "standing *under § [36]12* to extend to the full limits of Art. III," 455 U.S. at 372 (emphasis added), but it never mentioned the distinct "aggrieved" language in § 3610. As in *Gladstone*, the statement in *Havens* that anyone with Article III standing could sue under § 3612 was unnecessary, as the *Havens* plaintiffs plainly asserted interests protected by the FHA.

Havens first considered whether two of the plaintiffs—one white and one African-American—could

challenge defendants' practices in their role as "testers," *i.e.* those "who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices." 455 U.S. at 373. The defendant had informed the white plaintiff that apartments were available, while telling the African-American plaintiff that apartments were not available. *Id.* at 368. The Court held that the African-American plaintiff could sue—not because anyone with Article III standing can sue, but because she was suing to enforce her own right to truthful information, which the FHA explicitly guarantees. *Id.*; *see* 42 U.S.C. § 3604(d). The Court then held that the white plaintiff could *not* sue in his role as a tester because he had only been provided *truthful* information. *Havens*, 455 U.S. at 374-75.

Havens also allowed plaintiffs' suits to proceed because they asserted other interests the FHA was intended to protect. One set of plaintiffs claimed defendants' racial steering deprived them of the same interest in an integrated community at issue in *Trafficante* and *Gladstone*. *Id.* at 375-78. And the other plaintiff was a non-profit that "assist[s] equal access to housing," and sued based on the "significant resources" it spent "to identify and counteract the defendant's racially discriminatory steering practices." *Id.* at 379. *Havens*'s "holding[]," like *Gladstone*'s, is therefore "compatible with the 'zone of interests' limitation." *Thompson*, 562 U.S. at 176.

4. For present purposes, what this Court held in interpreting the original 1968 FHA was that plaintiffs can sue to vindicate the Act's interests in integration and fighting segregation even if those parties

were not themselves denied access to housing. Petitioners agree that plaintiffs can sue when seeking to further the FHA's interest in defeating segregation and promoting integrated and balanced living patterns.

But endorsing suits that pursue claims *within* the FHA's zone of interests is one thing; endorsing claims wholly *outside* that zone would be quite another. As discussed above, the statements in those cases about whether anyone with Article III standing may sue were not necessary to the Court's analysis in any of the decisions, as this Court recognized in *Thompson*, where it called those statements "dictum."

That is especially true of this Court's more unconditional statements in *Gladstone* and *Havens*. Neither case involved § 3610's cause of action for those "aggrieved," and the § 3612 right of action at issue in those cases did not "restrict[]" plaintiffs to those "aggrieved" by a statutory violation. *Gladstone*, 441 U.S. at 103. This Court did not decide the scope of § 3610 in those cases any more than it decided the scope of Title VII in *Trafficante*. Rather, as this Court made clear in *Thompson*, observations on the possible scope of a statute not directly at issue were just dicta.

Thus, even if Miami were suing under the pre-1988 version of § 3610, its suit would fail. The zone-of-interests presumption would still apply, and the dicta in this Court's three decisions would not rebut it. Nothing in any of those three decisions speaks to whether Miami may sue for indirect, collateral economic injuries allegedly traceable to discrimination directed at a stranger.

2. The 1988 Amendments Limited The Private Cause Of Action To "Aggrieved" Plaintiffs, Clarifying That The Zone-Of-Interests Limitation Applies

The 1988 Amendments changed the Fair Housing Act in a number of respects, seven years after the last of this Court's three decisions. As discussed above, "aggrieved person" became a defined term, and the use of that term in various new provisions sheds light on what it means. *See* pp. 24-25, *supra*. In addition, Congress replaced the distinct §§ 3610 and 3612 rights of action with a new § 3613, which provides that *all* private rights of action under the FHA are limited to those "aggrieved" by a statutory violation (unlike the version of § 3612 in *Gladstone* and *Havens*). *See* 42 U.S.C. § 3613(a)(1)(A). These amendments significantly undermine the court of appeals' reliance on cases interpreting the provisions replaced in 1988.

When Congress added the word "aggrieved" to the FHA's private right of action in 1988, it was aware of three key features of this Court's decisions. First, Congress knew that this Court had written in *Gladstone*, albeit in dicta, that the existing private right of action in § 3612 extended as broadly as Article III in part because it was *not* limited to "aggrieved" plaintiffs, and in fact included "no particular statutory restrictions on potential plaintiffs." *Gladstone*, 441 U.S. at 103. Second, Congress knew that this Court was more equivocal in interpreting § 3610, which was limited to persons "aggrieved," giving standing only "to all in the same housing unit who are injured by racial discrimination in the manage-

ment of those facilities." *Trafficante*, 409 U.S. at 212. Third, Congress knew in 1988 that this Court had consistently interpreted the Administrative Procedure Act, which granted a cause of action to a person "aggrieved" by agency action, to include a zone-of-interests limitation. *E.g.*, *Camp*, 397 U.S. at 153; *Clarke*, 479 U.S. at 394-96.

Given this background knowledge, if Congress's intent had been to *negate* the zone-of-interests limitation, it would not have done what it did. It could have *kept* the private right of action that had "no particular statutory restrictions on potential plaintiffs." *Gladstone*, 441 U.S. at 103. Instead it provided that all civil actions would be governed by the "aggrieved person" language this Court had interpreted more narrowly.

The legislative history supports this interpretation of the 1988 Amendments. The House Report acknowledged *Gladstone* and *Havens*, and "reaffirm[s] the broad holdings of these cases." *House Report* 23. Notably, however, the House Report recognized that the "broad holdings" of these cases are simply that "standing requirements for judicial and administrative review are identical" and that "'testers' have standing to sue" under the FHA—*not* that anyone with Article III standing can bring suit. *Id.* That is consistent with how Congress ratifies a settled judicial construction: the settled construction includes only this Court's prior *holdings*, not its dicta. *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 351 n.12 (2005). Further, the House Report specifically noted that Congress "adopt[ed] as its definition language similar to that contained in [pre-amendment] Section [36]10 of existing law"—

i.e., *not* the broader language of pre-amendment § 3612. *House Report* 23.

3. The 1988 Amendments Significantly Expanded Government Enforcement, Eliminating Any Need To Over-Read The Definition of Private Plaintiffs

Congress's 1988 expansion of federal enforcement powers and HUD's administrative adjudication procedures further demonstrate that Congress intended that only plaintiffs within the FHA's zone of interests could be considered "aggrieved." In *Trafficante*, this Court relied heavily on the limited federal enforcement powers in the original version of the statute. It explained that because "HUD has no power of enforcement," and the Attorney General's enforcement powers were limited to "pattern or practice" suits, Congress must have intended to rely on "private attorneys general" to enforce the FHA. 409 U.S. at 210-11.[13] In the 1988 Amendments, Congress altered the premise on which *Trafficante* rested.

Most importantly, the 1988 Amendments gave HUD the enforcement powers it lacked in the original FHA. Congress authorized HUD to "investigate housing practices to determine whether a complaint should be brought," and to bring an administrative complaint "on its own initiative" if it believes there has been an FHA violation. 42 U.S.C. § 3610(a)(1)(A). The 1988 Amendments also greatly expanded the Attorney General's remedial authority in "pattern or practice" suits. While the original ver-

---

[13] This Court similarly pointed to Congress's reliance on "private attorneys general" to justify an expansive zone of interests for the Endangered Species Act. *Bennett*, 520 U.S. at 165-66.

sion of the FHA only authorized the Attorney General to seek "preventive relief," 42 U.S.C. § 3613 (1970), the current version allows the Attorney General to not only obtain "other relief as the court deems appropriate, including monetary damages to persons aggrieved," but also to seek significant civil penalties. 42 U.S.C. § 3614(d).

By coupling the limitation of the FHA's private right of action to "aggrieved" persons with a significant increase in federal enforcement powers, Congress strongly suggested an intent to decrease its previous reliance on private attorneys general and to limit "aggrieved" persons to those within the FHA's zone of interests. Miami's complaint falls outside that zone.

D. Miami's Claim Falls Outside The Fair Housing Act's Zone Of Interests Because It Alleges Only Economic Harm Incidental To Alleged Discrimination Against Others

Miami's FHA claims are unlike any this Court has confronted, and probably unlike any FHA lawsuit *any* court confronted before 2008, when municipalities, and their contingency-fee attorneys, began filing these suits. Miami does not claim to have been deprived of any right under the statute, and does not claim that the city, or even certain neighborhoods, are less integrated than they would have been were it not for petitioners' lending conduct. Nor does Miami seek to recover money spent combating alleged discrimination. Instead, Miami seeks purely monetary damages for the wholly collateral effects of alleged discrimination directed against others.

1. Zone-of-interests analysis is intended to bar suits like Miami's that stray far from Congress's goals in enacting the statute. A suit is outside the zone "if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Thompson*, 562 U.S. at 178. The test is "not meant to be especially demanding," and is satisfied so long as the plaintiff seeks to vindicate an interest Congress even "arguably" intended to protect. *Clarke*, 479 U.S. at 400. But that does not mean the test is toothless.

For instance in *Air Courier Conference of America v. American Postal Workers Union*, 498 U.S. 517 (1991), this Court held that a postal workers' union was not in the zone of interests to challenge a regulation allowing private carriers more opportunities to compete with the Postal Service. The Court accepted the district court's finding that the regulation had an "adverse effect on the employment opportunities of postal workers." *Id.* at 524. But the Court concluded that despite that financial injury, the union was outside the zone of interests because the statute creating the postal monopoly "exists to ensure that postal services will be provided to the citizenry at large, and not to secure employment for postal workers." *Id.* at 528.

Similarly in *Block v. Community Nutrition Institute*, 467 U.S. 340 (1984), this Court held that consumers could not sue to challenge a milk marketing order, which effectively set prices for milk. *Id.* at 341. Though marketing orders impacted consumers financially, this Court held that Congress had adopted the milk-marketing statute to protect the inter-

ests of "[h]andlers and producers," not to protect consumers from incidental financial harm. *Id.* at 346-47. That conclusion, the Court emphasized, "does not pose any threat to realization of the statutory objectives; it means only that those objectives must be realized through the specific remedies provided by Congress and at the behest of the parties directly affected by the statutory scheme." *Id.* at 352-53.[14]

2. As in *Block* and *Air Courier Conference*, the FHA's text and history demonstrate an interest in preventing a wide range of racially discriminatory housing practices, but not in protecting against downstream effects of those practices. Indeed, interpreting Congress's intent as broadly as Miami urges would lead to precisely the "absurd" claims that, as this Court held in *Thompson*, the zone-of-interests test is intended to rule out.

The FHA's interests are broad, but not limitless. The Act aims to prohibit discriminatory housing practices, and to counteract the segregation those practices cause. *Trafficante*, 409 U.S. at 211 ("[T]he reach of the [FHA] was to replace the ghettos 'by truly integrated and balanced living patterns.'"). And the Act, especially as amended in 1988, focused on ensuring that there are adequate mechanisms to enforce its prohibitions. But *nowhere* in either the text or history did Congress suggest that it intended to provide a remedy for all financial injury that could be somehow tied back to housing discrimination.

---

[14] Though the Court in *Block* cast much of its analysis in terms of whether Congress precluded judicial review of agency action, *see* 467 U.S.at 345-46, this Court has since described *Block* as a "useful reference point for understanding the 'zone of interests' test." *Clarke*, 479 U.S. at 399.

And *nowhere* did Congress suggest that it intended to enforce this civil-rights law by allowing claims by anyone suffering such attenuated financial injury. To the contrary, the legislative history of the 1988 Amendments suggests that Congress's intent with regard to enforcement was to *decrease* reliance on private enforcement, and increase reliance on government enforcement.

The FHA begins with a simple statement of its purpose: "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. The substantive prohibitions demonstrate that in providing for "fair housing," Congress intended to go beyond ensuring that individuals were not denied housing due to membership in a protected class. For instance, the FHA also protects the right to accurate information about the availability of housing, *id.* § 3604(d), and it prohibits, for profit, inducing sales or rentals by insinuating that members of a protected class are moving into the neighborhood, *id.* § 3604(e). Congress clearly envisioned suits by those denied the specific protections of these provisions, such as testers who are provided false information about housing availability on account of race. The breadth of these provisions also demonstrates that Congress's objective was not merely to remedy individual acts of discrimination, but also to fight segregation and promote integration more generally. Thus, as this Court held in *Trafficante*, *Gladstone*, and *Havens*, claims by plaintiffs seeking to vindicate broader rights in the benefits of an integrated community also fall within the FHA's zone of interests.

By contrast, nothing in the FHA suggests that Congress even "arguably" had an interest in remedying *all* financial harm that derives in any way from any act of housing discrimination. When Congress adopted the FHA in 1968, at a time when anger over housing segregation was not just hot but at the boiling point, the goal of the new statute was to attack first-party discrimination head-on: to "address[] the denial of housing opportunities" to African-Americans in response to the "considerable social unrest" caused by widespread discrimination. *Inclusive Communities*, 135 S. Ct. at 2515-16. Congress's goal was *not* to protect third parties that remotely and indirectly felt the effects of discrimination. Suits by plaintiffs collaterally affected by discrimination against strangers do absolutely nothing "to provide ... for fair housing throughout the United States." 42 U.S.C. § 3601.

Similarly, the 1988 Amendments did not seek to remedy all financial ramifications of housing discrimination. Rather, the changes focused on fixing three perceived shortcomings in the original act: lack of effective government enforcement, lack of protection for disabled people, and lack of protection for families with children. *See House Report* 13.

Congress also did not intend to rely on suits by such derivatively-injured plaintiffs to enforce the Act. In discussing the 1988 Amendments, the House Report specifically noted that the original act's reliance on private enforcement had proven ineffective. *Id.* at 16. But Congress's response was not to try to increase private enforcement—by, for instance, broadening the private right of action to allow "any person" to sue. To the contrary, Congress chose to

enhance *government* enforcement, adopting provisions to ensure that "the federal government can and will take an active role in enforcing the law." *Id.* at 17. And it enabled the Attorney General to obtain "monetary damages" and other "appropriate relief" for individual victims of discrimination. 42 U.S.C. § 3614(d)(1)(B). (Unlike Miami, which is suing for its own monetary award, the Attorney General disburses such recovery to the victims.)

3. Miami's only attempt to satisfy the zone-of-interests test, in its motion for reconsideration, was to propose adding general allegations to its complaint concerning its abstract interest in equal housing. J.A. 232-33. But as the district court recognized, those allegations are unconnected to Miami's claims in this case. Unlike the nonprofit and municipal plaintiffs in *Havens* and *Gladstone*, Miami is not contending that it suffered any injury *to its purported interest in "fair housing."* J.A. 233. Miami does not allege that Bank of America's conduct adversely affected racial diversity in the City. Nor does it claim damages from any loss of integration, or even from any efforts to combat alleged discrimination by Bank of America. And the harms it alleges from foreclosure would be the same no matter what the cause of the foreclosure.

Thus, like the plaintiffs in *Block* and *Air Courier Conference*, Miami asserts financial injury unconnected to an interest the FHA was intended to protect. Congress enacted the FHA to protect victims of housing discrimination and segregation, not to protect municipal bottom lines.

4. Concluding that the City's claims are within the FHA's zone of interests would open the FHA up

to exactly the "absurd" suits the zone-of-interests requirement is intended to avoid. 562 U.S. at 176-77. In *Thompson*, this Court described as "absurd" a Title VII suit by "a stockholder ... su[ing] a company for firing a valuable employee for racially discriminatory reasons so long as he could show the value of his stock decreased as a consequence." *Id.* Similar suits would be permissible under the FHA if claims for derivative financial harm were within the FHA's zone of interests. Every foreclosure plausibly connected to an allegedly discriminatory loan could trigger suits from possibly dozens of neighbors claiming diminution in property value. *See, e.g.*, J.A. 91-92 (alleging that every home within 449 feet of a foreclosure declines in value between $3,500 and $7,600). Private schools (or toy stores) could sue for damages from zoning ordinances or developer's practices that allegedly discriminate against families with children. And after this Court's decision in *Inclusive Communities*, such plaintiffs would not even have to allege that the underlying discrimination was *intentional*; non-minority plaintiffs could claim incidental financial harm from a facially neutral policy that had a disparate impact on protected third parties.

Such claims are not even arguably within the interests Congress sought to protect by adopting the FHA. Nor are Miami's.

II. The Fair Housing Act's Proximate-Cause Requirement Bars Claims, Like Miami's, For Damages That Are Too Attenuated From The Defendant's Alleged Discrimination

Even if a claim to recover tax revenue could be within the zone of interests—and even if no zone-of-interests limitation applied at all—Miami's theory would still fail. Proximate cause is a separate element of an FHA cause of action, and when that element is properly understood, it bars the unwieldy, multi-step theory of indirect injury that Miami has pleaded.

Even though a "literal reading" of many statutes could encompass "every harm that can be attributed directly or indirectly to the consequences" of a defendant's action, statutes are generally interpreted to bar claims for damages not proximately caused by defendants' conduct. *Associated General Contractors of California, Inc. v. Carpenters*, 459 U.S. 519, 529-30, 535-36 (1983); *Lexmark*, 134 S. Ct. at 1390. That is because, as the common law and Congress both recognize, "'the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing.'" *Lexmark*, 134 S. Ct. at 1390 (quoting *Associated General Contractors*, 459 U.S. at 536).

The court of appeals acknowledged that the FHA has a proximate-cause requirement, but erroneously held that Miami could satisfy it by pleading a "foreseeable" injury. But this Court has already rejected a foreseeability-only approach to proximate cause because nearly all consequences of an act can be foreseen. *Consol. Rail Corp.*, 512 U.S. at 553. The correct question is whether Miami's alleged injuries are

too attenuated to be actionable in federal court. The answer clearly is yes. Miami's chain of inferences is both lengthier and flimsier than other causation theories this Court has previously held too remote. Miami cannot possibly satisfy the proximate-cause requirement as correctly understood.[15]

A. The Proximate-Cause Requirement Bars Claims For Damages That Are Too Attenuated From The Defendant's Alleged Conduct

The proximate-cause limitation developed at common law as a response to the problem that, "[i]n a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond." *Prosser* § 41, at 264. Courts have long recognized that attaching liability based on such an endless causal chain would be not only impracticable, but unwise, as it "would result in infinite liability for all wrongful acts, and would 'set society on edge and fill the courts with endless litigation.'" *Id.* (quoting *North v. Johnson*, 58 Minn. 242, 245 (1894)); *see also Holmes*, 503 U.S. at 287 (Scalia, J., concurring) ("Life is too short to pursue every human act to its most remote consequences; 'for want of a nail, a kingdom was lost' is a commentary on fate, not the statement of a major cause of action against a blacksmith."). Proximate cause addresses this problem by limiting recovery based on "ideas of what justice demands," or

---

[15] In the district court and court of appeals, petitioners argued unsuccessfully that Miami did not have constitutional standing to sue for the related reason that its injury was not fairly traceable to the alleged discriminatory lending. Petitioners adhere to that view but did not petition for certiorari on it.

"what is administratively possible and convenient." *Prosser* § 41, at 264.

Among the "many shapes" the proximate-cause requirement took at common law to confront the specter of unlimited liability was "a demand for some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268-69. This directness inquiry presents the question "whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390. A plaintiff therefore cannot recover monetary damages when the connection between the harm and the wrongful conduct is "too 'tenuous and remote.'" *Prosser* § 43, at 297; *see also* 1 Thomas M. Cooley, *A Treatise on the Law of Torts* § 50, at 108 (4th ed. 1932) (Cooley) ("in law the immediate and not the remote cause of any event is regarded," and thus "the law always refers the injury to the proximate, not to the remote cause").

In the context of claims for purely financial harm, as opposed to harms to persons or property, the common law's directness requirement generally bars recovery of damages incidental to wrongful acts directed at a third person. As Justice Holmes described, "[t]he general tendency of the law, in regard to damages at least, is not to go beyond the first step." *Southern Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533–34 (1918); *see also Holmes*, 503 U.S. at 271; *Associated General Contractors*, 459 U.S. at 534. Thus one "leading treatise on damages" wrote that "[w]here the plaintiff sustains injury from the defendant's conduct to a third person, it is too remote" to support recovery. *Associated General Contractors*, 459 U.S. at 532 n.25 (quoting 1 J. Suth-

erland, *A Treatise on the Law of Damages* 55-56 (1882) (Sutherland) (emphasis omitted)); *see also* 1 Cooley § 50, at 110 n.26 (discussing the difference between "Proximate" and "Remote" cause); *Prosser* § 43, at 297 (defendant was not liable "for pecuniary loss" when "the connection between the negligence and [claimed] damages was too 'tenuous and remote'").

This Court has repeatedly incorporated the proximate-cause directness requirement to limit damages available under federal causes of action to those with a "sufficiently close connection to the conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390. In *Associated General Contractors*, this Court held that while a "literal reading" of the Clayton Act's cause of action "is broad enough to encompass every harm that can be attributed directly or indirectly to the consequences of an antitrust violation," Congress intended the statute to be "construed in light of its common-law background," which includes a "proximate cause" requirement that focuses on "the directness or indirectness of the asserted injury." 459 U.S. at 529, 531, 540. The Court therefore rejected a claim that depended on a "chain of causation" that included "several somewhat vaguely defined links." *Id.* at 540. In *Holmes*, this Court interpreted RICO to incorporate the same common-law understanding, holding that while the statute could be read to require only "but-for" causation, background proximate-cause principles limited claims to those with "some direct relation between the injury asserted and the injurious conduct alleged." 503 U.S. at 265-66, 268. Most recently, in *Lexmark*, this Court held that despite the Lanham Act's "broad language," the proximate-cause requirement limits a plaintiff to re-

covering "economic or reputational injury *flowing directly* from the" defendant's conduct. 134 S. Ct. at 1391 (emphasis added).

Lexmark clarified that the degree of directness required depends on the nature of the rights the relevant statute was intended to protect. *Id.* at 1390. Thus, even though a classic Lanham Act injury has an intervening step—the defendant deceives consumers, who withhold trade from the plaintiff—the defendant's injury still "flow[s] directly" from the plaintiff's conduct for purposes of proximate cause. *Id.* at 1391. But the Court emphasized that even where a statute's purposes suggest that a given cause of action allows for *some* attenuation between defendant's conduct and plaintiff's injury, the directness requirement still plays an important role in limiting *further* attenuation: "while a competitor who is forced out of business by a defendant's false advertising generally will be able to sue for its losses, the same is not true of the competitor's landlord, its electric company, and other commercial parties who suffer merely as a result of the competitor's inability to meet its financial obligations." *Id.* (internal quotation marks and alterations omitted). The relevant inquiry is whether "the harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Id.* at 1390.

In short, this Court has consistently held that Congress presumptively incorporates a proximate-cause limitation into statutory causes of action, and that the proximate-cause limitation Congress incorporates bars claims for damages that are too removed from the conduct the statute prohibits.

B. The Fair Housing Act Cause Of Action Incorporates The Same Directness Inquiry As Other Federal Causes Of Action

This Court's prior decisions applying the common law's proximate-cause requirement to federal statutes apply equally to the FHA. The FHA's cause of action is broad, but no broader than the Clayton Act, RICO, or Lanham Act causes of action. And like those causes of action, the FHA generally incorporates common-law rules. *Meyer v. Holley*, 537 U.S. 280, 285 (2003). Nothing in the text or history of the FHA suggests that Congress intended to incorporate a special version of proximate cause into the FHA, different from the common-law understanding this Court consistently described in *Associated General Contractors*, *Holmes*, and *Lexmark*. Thus the FHA incorporates the same common-law proximate-cause requirement as the other statutes this Court has considered, including the requirement that "the harm alleged ha[ve] a sufficiently close connection to the conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390.

Limiting FHA claims to those with a sufficiently close connection to a statutory violation is consistent with the policy concerns that have motivated this Court to apply the directness requirement. As this Court explained, "the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." *Holmes*, 503 U.S. at 269; *see also Associated General Contractors*, 459 U.S. at 542-44. This concern is equally applicable to the FHA, as these cases show. For in-

stance, the loan defaults, foreclosures, and changes in property valuations that form the links in the City's causal chain can be caused by various individual and macro-economic factors other than loan terms—factors such as job loss, the financial crisis, illness, and divorce, to name only a few. *See* Pet. App. 70a-71a; *see generally* J.A. 105-184. Such difficulties in isolating the causes of claimed damages will occur repeatedly if the FHA cause of action is extended to anyone alleging a foreseeable financial loss traceable in any way to a statutory violation.

Further, "the need to grapple with these problems is simply unjustified by the general interest in deterring injurious conduct, since directly injured victims can generally be counted on to vindicate the law." *Holmes*, 503 U.S. at 269-70; *see also Associated General Contractors*, 459 U.S. at 541-42. This is especially true under the FHA. Not only can directly injured victims bring suit, *see* 42 U.S.C. §§ 3610, 3612, 3613, aided by an attorney's-fee-shifting provision, *id.* § 3613(c)(2), but HUD can bring an administrative action on behalf of a directly injured victim, *id.* § 3610(a)(1)(A)(i), and the Attorney General can bring suit against those engaged in a "pattern or practice" of statutory violations, *id.* § 3614(a). As in the RICO, antitrust, and Lanham Act contexts, allowing suits for indirect financial injury incidental to an FHA violation against a third party would lead to complex damages litigation while doing little, if anything, to promote compliance with Congress's interest in fair housing.

The court of appeals' foreseeability-only approach to proximate cause also plainly fails to fulfill the purpose of the proximate-cause inquiry. This Court

has recognized that limiting a plaintiff's recovery to foreseeable harm would be "hardly a condition at all" on liability, because at a sufficiently high level, "*all* consequences ... may be foreseen." *Consol. Rail Corp.*, 512 U.S. at 553 (emphasis in original). The court of appeals operated at such a high level here: it held that because petitioners "had access to analytical tools" and "published reports," the City's extended causal chain was foreseeable. Pet. App. 38a. A foreseeability-only test would therefore do little, if anything, to satisfy the primary goal of the proximate-cause inquiry: to avoid imposing "infinite liability for all wrongful acts." *Prosser* § 41, at 264.

Further, as described above, foreseeability alone was never the standard governing proximate cause for purely financial damages, even if there was a common-law negligence duty to prevent foreseeable harm to persons or property. *See* Dan B. Dobbs, *Law of Remedies* § 6.6(2), at 136 (2d ed. 1993) ("physical injury torts furnish little analogy to purely economic interference, as to which legal policy is much more restrictive"). Foreseeability also was never the standard for recovery in common-law actions premised on a *statutory* violation. *See Prosser* § 43, at 286 (describing the "familiar rule that a statute intended to protect only a particular class of persons or to guard only against a particular risk or type of harm, creates no duty to any other class or risk").

The court of appeals further erred in concluding that applying a directness inquiry to the FHA would bar FHA claims simply because they depend on even one intervening step between the alleged injury and the statutory violation. *See* Pet. App. 36a-37a. As *Lexmark* made clear, the directness inquiry does not

bar any claim that relies on an intervening step, but instead requires an analysis of whether "the harm alleged has a *sufficiently close* connection to the conduct the statute prohibits." 134 S. Ct. at 1390 (emphasis added). Thus, applying a directness requirement in the FHA context is consistent with, for instance, this Court's holding that a fair-housing organization can sue to recover money it spent identifying and combating a defendant's "racially discriminatory steering practices." *Havens*, 455 U.S. at 379. Although there is one intervening step between the discrimination and the injury, that step is "not fatal" because the damages were incurred while fighting the very "conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390-91.

Congress presumptively bars damages claims that are too remote from a statutory violation; nothing in the FHA overcomes that presumption, and the policy goals underlying that directness requirement apply equally to the FHA. This Court should therefore hold that in order to satisfy the FHA's proximate-cause requirement, an FHA plaintiff's alleged harm must flow directly from conduct the FHA prohibits.

C. Miami Did Not Adequately Allege That Its Injuries Were Proximately Caused By Bank Of America

Miami alleges purely financial harm that falls at the end of a long causal chain running from loan terms, to defaults, to foreclosures, to vacancies, to city-wide property devaluations, to lost tax revenue and increased municipal service costs. J.A. 88-95. This causal chain is far too attenuated to satisfy the proximate-cause requirement, as properly under-

stood. This Court has already held that allegations involving a significantly more direct connection between injury and statutory violation fail to satisfy proximate cause. *Holmes*, 503 U.S. at 271. And, unlike the plaintiffs in other proximate-cause cases that have divided this Court, Miami does not and could not contend that its indirect injuries were the "intended" or "desired" consequence of Bank of America's alleged conduct. *See Hemi Group, LLC v. City of New York*, 559 U.S. 1, 24 (2010) (Breyer, J., dissenting).

A plaintiff's allegations are generally too indirect to satisfy proximate cause when the plaintiff claims a purely financial injury that "flow[s] merely from the misfortunes visited upon a third person by the defendant's acts." *Holmes*, 503 U.S. at 268-69. Thus, at common law, a plaintiff responsible for supporting town paupers cannot recover from one who assaults a pauper, leading to increased expenses for the plaintiff. Sutherland 55 (citing *Anthony v. Slaid*, 11 Met. 290 (Mass. 1846)); 1 Cooley § 50, at 110 n.26. That is true even where the plaintiff responsible for paupers' care is the city government. *Anthony*, 11 Met. at 290. Similarly, a defendant who negligently secures his ship in a river, leading to a collision and ice jam, is not liable for other shippers' increased costs from transporting ship cargoes around the jam. *Prosser* § 43, at 297. And a defendant who negligently causes a rush-hour collision in the Brooklyn Battery Tunnel would not be liable for foreseeable financial injuries to other drivers who are late to work. *Petitions of Kinsman Transit Co.*, 388 F.2d 821, 825 n.8 (2d Cir. 1968).

This Court applied these common-law rules in *Holmes*. In that case, a broker-dealer had become insolvent after being victimized by the defendants' securities fraud, resulting in the broker-dealer defaulting on its customers' claims. 503 U.S. at 262-63. This Court held that these customers' injuries were not proximately caused by the defendants' conduct because "the link is too remote between the stock manipulation alleged and the customers' harm": "The broker-dealers simply cannot pay their bills, and only that intervening insolvency connects the conspirators' acts to the losses suffered by the non-purchasing customers." *Id.* at 271.

This Court's holding was not only required by common-law proximate-cause principles, it was also "supported" by the policy considerations underlying the "direct-injury limitation." *Id.* at 272. If the customers could bring their claims for indirect financial losses, "the district court would first need to determine the extent to which their inability to collect from the broker-dealers was the result of the [securities fraud], as opposed to, say, the broker-dealers' poor business practices or their failures to anticipate developments in the financial markets." *Id.* at 273. The court would then need to find a way to apportion damages. *Id.* And finally, "the law would be shouldering these difficulties despite the fact that those directly injured, the broker-dealers, could be counted on to bring suit for the law's vindication." *Id.* The Court recognized that RICO was to be "liberally construed," but held that there is "nothing illiberal" in holding that claims by "secondary victims" of a statutory violation are barred by "proximate-causation standards." *Id.* at 274.

The City's alleged injuries in this case are far more attenuated than the customers' injuries in *Holmes*. The customers had to prove only one extra causal step: that the broker-dealer's insolvency was caused by the defendants' securities fraud, as opposed to the broker-dealer's general incompetence. *Id.* at 273. By contrast, to prove entitlement to lost tax revenue and increased costs, the City must prove numerous intermediate steps, including: (1) that the loan terms caused each borrower's default, rather than job loss, divorce, injury, sickness, or some other factor; (2) that each foreclosure was caused by the default rather than, for instance, the borrower's decision to surrender the house or not to seek or accept a loan modification; (3) that properties became vacant and deteriorated because of the default and foreclosure rather than because the home was abandoned voluntarily or the borrower herself chose to allow disrepair; (4) that city expenses increased in affected neighborhoods as a direct result of local property conditions rather than political considerations; and (5) that any decrease in property values was caused by the foreclosures and vacancies, rather than the financial crisis or related trends at the national, regional, city-wide, or neighborhood level, or by the loans made by another lender or lenders (some of whom Miami has also sued). *See* J.A. 88-92.

Exponentially increasing the level of complexity, the relevant actors in that drawn-out sequence are all different: borrowers make the decisions about payment, creditors make the decisions about foreclosure or loan workout, occupants make the decision whether to vacate the property early, squatters or vandals decide whether to degrade the empty home, city officials decide whether and how to allocate mu-

nicipal resources, and local assessors decide whether, why and how the value of the property has changed. Evaluating whether securities fraud caused one broker-dealer's insolvency (deemed too remote in *Holmes*) would be trivial compared to evaluating why and how Miami's tax base shrank or expenditures increased. And forcing courts to undertake these inquiries would do little, if anything, to combat discriminatory housing practices given that a *direct* suit could have been brought not only by individual borrowers, but also by the federal government.

This case does not raise the more complex questions that have divided this Court concerning how the proximate-cause requirement applies when the plaintiff was not an incidental victim of a statutory violation against others, but was an intended, if indirect, target of defendant's conduct. For instance, in *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006), the defendant illegally failed to charge sales tax to its customers, allowing it to charge lower prices and steal customers from the plaintiff. *Id.* at 453-54. And in *Hemi Group*, New York City sued an online cigarette retailer for failing to file required reports of its New York cigarette sales that were crucial to New York's ability to collect cigarette taxes. 559 U.S. at 5-6. In both cases, this Court held that the plaintiffs failed to satisfy the proximate-cause requirement because the injuries were not sufficiently direct. *Anza*, 547 U.S. at 458-61; *Hemi Group*, 559 U.S. at 11-12 (plurality opinion). In both cases, however, concurring and dissenting Justices expressed concern about applying the directness requirement to preclude suits where the defendant "intended, indeed desired" that its conduct would produce plaintiff's alleged harm. *Hemi Group*, 559 U.S. at 24 (Breyer,

J., dissenting); *see also Anza*, 547 U.S. at 470-71 (Thomas, J., concurring in part and dissenting in part).

Such issues are irrelevant in this case, where Miami has not alleged that the harm was "desired" or "intended" by Bank of America. In *Anza*, the defendant's goal was (arguably) to undercut its competitor's prices by cheating on its taxes. And in *Hemi Group*, the online retailer's goal was (arguably) to gain customer loyalty by supporting its customers' tax evasion. *But see Hemi Group*, 559 U.S. at 13 n.1 (majority opinion) (Hemi's intent was "not to defraud the City ... but to sell more cigarettes"). This case involves no such intentional bank shot: like the plaintiff in *Holmes*, Miami claims that it suffered unintended collateral financial damage from a statutory violation allegedly committed against a third party—a third party even more remote from Miami than the brokerage in *Holmes* was from its customer. Even the concurring and dissenting Justices in *Anza* and *Hemi Group* agreed that such claims fail the proximate-cause requirement. *Hemi Group*, 559 U.S. at 27 (Breyer, J., dissenting) (distinguishing *Holmes* because the defendant in *Holmes* did not intend plaintiffs' harm, and a broker's customer's loss "differs in kind" from the types of losses the statute's "violation would ordinarily cause"); *Anza*, 547 U.S. at 464-65 (Thomas, J., concurring in part and dissenting in part) (agreeing with *Holmes* that "harm flowing merely from the misfortunes visited upon a third person by the defendant's acts" is not recoverable).

Miami's suit could have equally been brought by a neighbor whose home lost value, a utility company that lost a ratepayer, a local store that lost a custom-

er, or "other commercial parties who suffer[ed] merely as a result of the [borrowers'] inability to meet [their] financial obligations." *Lexmark*, 134 S. Ct. at 1391 (internal quotation marks omitted). To recognize such claims would be to resurrect the specter of "infinite liability for all wrongful acts" that proximate cause generally, and the directness requirement specifically, are intended to avoid. *Prosser* § 41, at 264. The court of appeals' decision to recognize such an unlimited cause of action should be reversed.

* * * * *

The Fair Housing Act is a historic statute with an important mission. Miami and its fellow municipal plaintiffs have hijacked this civil-rights statute and used it to bring a claim that is completely unconnected to the FHA's mission of combating housing discrimination and segregation. This case illustrates precisely why the default rules of statutory interpretation call for the federal courts to apply the ordinary zone-of-interests requirement and the correct proximate-cause test: Congress would not silently endorse such an unconstrained cause of action. Congress never authorized massive money damages for a claim of injury that has nothing to do with integration and that depends on a Rube Goldberg-style theory of indirect causation.

This Court should keep the Fair Housing Act focused on its true purpose—"provid[ing] ... for fair housing." 42 U.S.C. § 3601. Putting an end to Miami's suit will not hamper that mission one whit.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

DAVID J. ZIMMER
GOODWIN PROCTER LLP
Three Embarcadero Ctr.
24th Floor
San Francisco, CA 94111

August 22, 2016

WILLIAM M. JAY
Counsel of Record
THOMAS M. HEFFERON
MATTHEW S. SHELDON
ANDREW KIM
DAVID S. NORRIS
GOODWIN PROCTER LLP
901 New York Ave., N.W.
Washington, DC 20001
wjay@goodwinlaw.com
(202) 346-4000

Counsel for Petitioners

APPENDIX

APPENDIX

1. The current version of Title 42 of the United States Code, ch. 45, subch. I (the Fair Housing Act), provides in pertinent part:

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

§ 3602. Definitions

As used in this subchapter—

* * * *

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

* * * *

(i) "Aggrieved person" includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

* * * *

§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(A) that buyer or renter;

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes—

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. 2

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and

construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means—

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

§ 3605. Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction,

because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) Appraisal exemption

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service,

organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

* * * *

§ 3610. Administrative enforcement; preliminary matters

(a) Complaints and answers

(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such a complaint—

(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;

(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation

(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that

disclosure is not required to further the purposes of this subchapter.

(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing—

(i) the names and dates of contacts with witnesses;

(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(iii) a summary description of other pertinent records;

(iv) a summary of witness statements; and

(v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement

Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 3614 of this title for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action

(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 3612 of this title.

(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 3614(a) and 3614(c) of this title or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) Referral for State or local proceedings

(1) Whenever a complaint alleges a discriminatory housing practice—

(A) within the jurisdiction of a State or local public agency; and

(B) as to which such agency has been certified by the Secretary under this subsection; the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless—

(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

(ii) the procedures followed by such agency;

(iii) the remedies available to such agency; and

(iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this subchapter.

(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

(4) During the period which begins on September 13, 1988, and ends 40 months after September 13, 1988, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied

recognition under 24 CFR 115.7) for the purposes of this subchapter on the day before September 13, 1988, shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on September 13, 1988. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The. Secretary shall take appropriate action with respect to any agency not so qualifying.

(g) Reasonable cause determination and effect

(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further

action under subsection (f)(2) of this section with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

(B) Such charge—

(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(ii) shall be based on the final investigative report; and

(iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 3614 of this title, instead of issuing such charge.

(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(h) Service of copies of charge

After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 3612(a) of this title and the effect of such an election, to be served—

(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

(2) on each aggrieved person on whose behalf the complaint was filed.

* * * *

§ 3612. Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (*o*) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(d) Expedited discovery and hearing

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Secretary shall, not later than 180 days after September 13, 1988, issue rules to implement this subsection.

(e) Resolution of charge

Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) Effect of trial of civil action on administrative proceedings

An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Hearings, findings and conclusions, and order

(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was

filed, and the respondent, in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent—

(A) in an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then

the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this subchapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)—

(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal.

(h) Review by Secretary; service of final order

(1) The Secretary may review any finding, conclusion, or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) Judicial review

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28.

(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) Court enforcement of administrative order upon petition by Secretary

(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) Relief which may be granted

(1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may—

(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(*l*) Enforcement decree in absence of petition for review

If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement—

(1) which is filed by the Secretary under subsection (j) of this section after the end of such day; or

(2) under subsection (m) of this section.

(m) Court enforcement of administrative order upon petition of any person entitled to relief

If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the Secretary has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the

United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) Entry of decree

The clerk of the court of appeals in which a petition for enforcement is filed under subsection (*l*) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(*o*) Civil action for enforcement when election is made for such civil action

(1) If an election is made under subsection (a) of this section, the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant

with respect to such discriminatory housing practice in a civil action under section 3613 of this title. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 3613 of this title shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) Attorney's fees

In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5 or by section 2412 of title 28.

§ 3613. Enforcement by private persons

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain

appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) Appointment of attorney by court

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) Relief which may be granted

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) Effect on certain sales, encumbrances, and rentals

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this subchapter.

(e) Intervention by Attorney General

Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

§ 3614. Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) On referral of discriminatory housing practice or conciliation agreement for enforcement

(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 3610(g) of this title.

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 3610(c) of this title.

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 3610(c) of this title.

(c) Enforcement of subpoenas

The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom

the subpoena was addressed resides, was served, or transacts business.

(d) Relief which may be granted in civil actions under subsections (a) and (b)

(1) In a civil action under subsection (a) or (b) of this section, the court—

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28.

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

2. The 1970 version of Title 42 of the United States Code, ch. 45, subch. I (the Fair Housing Act), provided in pertinent part:

§ 3610. Enforcement.

(a) Person aggrieved; complaint; copy; investigation; informal proceedings; violations of secrecy; penalties.

Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any

employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Complaint; limitations; answer; amendments; verification.

A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary.

Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the

appropriate State or local agency of any complaint filed under this subchapter which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(d) Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders.

If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing

law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) Burden of proof.

In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Trial of action; termination of voluntary compliance efforts.

Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

* * * *

§ 3612. Enforcement by private persons.

(a) Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders.

The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however*, That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however*, That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

(b) Appointment of counsel and commencement of civil actions in Federal or

State courts without, payment of fees, costs, or security.

Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) Injunctive relief and damages; limitation; court costs; attorney fees.

The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than $1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

§ 3613. Enforcement by the Attorney General; issues of general public importance; civil action; Federal jurisdiction; complaint; preventive relief.

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to

the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.